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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,065	12/19/2001	Ghita Lanzendorfer	Beiersdorf 758-WCG	8343
27386	7590	01/11/2005	EXAMINER	
NORRIS, MCLAUGHLIN & MARCUS, P.A. 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			JIANG, SHAOJIA ANNA	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,065

Applicant(s)

LANZENDORFER ET AL.

Examiner

Shaojia A. Jiang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/6/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This Office Action is a response to Applicant's response filed on October 6, 2004 wherein no amendment is filed, i.e., no claims are amended, cancelled, or newly submitted.

Currently, claims 1 and 3-8 are pending in this application.

Claims 1 and 3-8 are currently under examination on the merits.

As recorded in the previous Office Action, this application claims priority to Germany 100 65 046.5. The copy of certified copy of the priority has been filed with the instant Application. It is noted that Germany 100 65 046.5 is in German; no translation of said Germany application into English has been provided.

Note as Applicant pointed out that the correct patent number in the obviousness-type double patenting of record in the previous Office Action mailed April 7, 2004 is US 6,620,420, not 6,503,894. The typographic error is regretted.

The terminal disclaimer filed on October 6, 2004, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. 6,620,420 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Therefore, the obviousness-type double patenting rejection of Claims 1 and 3-8 as being unpatentable over claims 1-9 of U.S. Patent No. 6,620,420 of record in the Office Action dated April 7, 2004 is withdrawn.

The terminal disclaimer filed on October 6, 2004, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of copending Application No. 10/602,392 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Therefore, the provisional obviousness-type double patenting rejection of Claims 1 and 3-8 as being unpatentable over claims 1-16 of copending Application No. 10/602,392 of record in the Office Action dated April 7, 2004 is withdrawn.

Applicant's arguments in the appeal brief filed on December 8, 2003 and in the response filed October 6, 2004 with respect to the rejection made under 35 U.S.C. 103(a) as being unpatentable over under 35 U.S.C. 103(a) as being unpatentable over Beerse et al. (6,294,186) of record have been considered and are found persuasive to remove this particular rejection, since Beerse et al. merely disclose that the composition may comprise ammonium acryloyldimethyltaurates/vinylpyrrolidone copolymer (Aristoflex AVC) in amount of 2% wt, but fail to teach or suggest to reduce the amount of Aristoflex AVC to the claimed herein, 0.2 to 0.3% of Aristoflex AVC, which is about ten times less than 2% wt in Beerse et al.

Therefore, the said rejection is withdrawn.

The following is new rejections necessitated by Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on October 6, 2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loffler (US 6489395, PTO-1449 submitted October 6, 2004).

Loffler discloses cosmetic emulsion compositions for skin care, an oil-in-water system, comprising from 69.10-81.90 % water, 5-20% lipid phase such as Jojoba oil and mineral oil, 0.1-5% of oligoester emulsifiers which may be up to 10%, and Aristoflex AVC (ammonium acryloyldimethyltaurates/vinylpyrrolidone copolymer) in amount of 0.6-0.7 % wt (see specific Examples 1-7 at col.5-7).

Loffler does not expressly disclose a particular composition comprising the particular amounts of ingredients, e.g. 0.2 to 0.3% of Aristoflex AVC.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to optimize and determine the particular amount of Aristoflex AVC in the compositions, e.g. 0.2 to 0.3% of Aristoflex AVC.

One having ordinary skill in the art at the time the invention was made would have been motivated to optimize and determine the particular amounts of ingredients in the compositions, e.g. 0.2 to 0.3% of Aristoflex AVC, since the compositions of Loffler

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for the same intended use, skin caring, comprising the same ingredients, water phase, lipid phase, and emulsifiers in the same amounts as the instantly claimed, and Aristoflex AVC (ammonium acryloyldimethyltaurates/vinylpyrrolidone copolymer) in amount of 0.6 - 0.7 % wt which is substantially close to 0.2 to 0.3% wt as claimed herein.

It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980). Moreover, the optimization of the amounts which is close to the known amount according the disclosures of Loffler is considered well within conventional skills in cosmetic science, involving merely routine skill in the art.

Claims 4-5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loffler (US 6489395) in view of Applicant's admission regarding the prior art in the specification at page 14-19.

The same disclosure of Loffler has been discussed in the 103(a) rejection set forth above (see *supra*).

Loffler does not expressly disclose the compositions therein further comprising one or more dyes coloring pigments.

It is noted that Applicant cites the general teaching in regard to adding dyes coloring pigments or cosmetic colorants into a cosmetic composition, from the Book, the Rowe Colour Index, 3rd Edition, Society of Dyers and Coloudsts, Bradford, England,

1971. See Applicant's admission regarding the prior art in the specification at page 14-19.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to further comprise one or more dyes coloring pigments in the compositions.

One having ordinary skill in the art at the time the invention was made would have been motivated to further comprise one or more dyes coloring pigments in the known compositions since adding dyes coloring pigments to a cosmetic composition is well known in the art and is considered conventional in the competence level of an ordinary skilled artisan in cosmetic science.

In view of the rejections to the pending claims set forth above, no claims are allowed.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on October 6, 2004 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

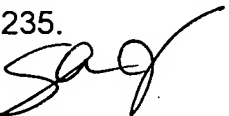
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.



S. Anna Jiang, Ph.D.
Primary Examiner, AU 1617
January 6, 2005